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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,877	12/03/2003	James L. Winkler	018547-035540US	6741

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EXAMINER
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SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/727,877

Applicant(s)

WINKLER ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 42 is/are allowed.
- 6) ☒ Claim(s) 33-41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08 March 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 38-41 and 43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The declaration refers to the specification filed as 09/032,724. This application (09/032,724) does not provide support for the step of rotating such that a bubble agitates the fluid in the container.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 35, 36, 39, 40, 44 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is lack of antecedent basis for "the probe array", recited in claims 35, 39 and 44. Is this the same as the polymer array or different?

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 33 and 35-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells (US 423,362). Regarding claim 33, Wells ('362) discloses a method for facilitating the mixing of a fluid, the method comprising providing a container (B) containing a polymer array (proteins of milk, or cellulose of the wood mentioned on page 1 line 45 of the containers) and a fluid (water of milk); coupling the container to a holding device, the holding device comprising a body (A) with a rotational axis, a pair of end members extending from the axis and a plurality of walls extending between the end members parallel to the rotational axis, such that the polymer array is substantially perpendicular to the rotational axis (see Fig. 2); rotating the body about the rotational axis such that the fluid is agitated to mix the fluid within the container (see page 1, lines 39-45). "Fundamentals of Dairy Chemistry" (especially pages 4-6) and "Wood Handbook" (especially pages 2-3 to 2-4) are cited regarding the compositions and intrinsic properties of milk and wood. Regarding claim 35, the container defines a chamber, the chamber including a pair of closely spaced apart faces that are separated by walls to define a narrow interior, wherein one of the faces defines a planar surface one which the probe array is disposed (see page 1, lines 43-50). Regarding claim 36, the walls of the chamber are set at angles sufficient to agitate the fluid when rotated (see page 1, lines 39-43). Regarding claim 37, the body is rotated at 70-80 rpm (see page 2, lines 5-8). Regarding claim 38, Wells ('362) discloses a method for facilitating the mixing of a fluid, the method comprising providing a container (B) containing a polymer array (proteins of milk, or cellulose of the wood mentioned on page 1 line 45 of the containers), wherein the container is only partially filled with a fluid (see page 1, lines

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39-43 and page 2, lines 5-8); coupling the container to a holding device, the holding device comprising a body (A) with a rotational axis, a pair of end members extending from the axis and a plurality of walls extending between the end members parallel to the rotational axis, such that the polymer array is substantially perpendicular to the rotational axis (see Fig. 2); rotating the body about the rotational axis such that the fluid is agitated to mix the fluid within the container (see page 1, lines 39-45). Regarding claim 39, the container defines a chamber, the chamber including a pair of closely spaced apart faces that are separated by walls to define a narrow interior, wherein one of the faces defines a planar surface one which the probe array is disposed (see page 1, lines 43-50). Regarding claim 40, the walls of the chamber are set at angles sufficient to agitate the fluid when rotated (see page 1, lines 39-43).

***Allowable Subject Matter***

7. Claim 42 is allowed.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS